

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

SAS INSTITUTE INC.,

Plaintiff,

vs.

WORLD PROGRAMMING LIMITED et al.,

Defendants.

Civil Action No. 2:18-CV-00295-JRG

**Jury Trial Demanded**

**JOINT MOTION TO MODIFY FINAL PRE-TRIAL ORDER**

Pursuant to the Court’s October 26, 2020 Memorandum Opinion and Order (Dkt. 465), and the parties’ Joint Status Report, filed on November 10, 2020 (Dkt. 469), Plaintiff SAS Institute, Inc. (“SAS”) and Defendant World Programming, Ltd. (“WPL”) jointly move to modify the Pre-Trial Order, as there are no remaining claims ripe for the currently-set January 4, 2021 trial.

**BACKGROUND**

On June 29, 2020, the parties filed a proposed Joint Final Pretrial Order, which included for trial SAS’s claims for copyright infringement of the SAS System and the SAS Manuals (and WPL’s related declaratory judgment counterclaims), patent infringement of two of SAS’s patents (U.S. Patent Nos. 7,170,519 (“the ’519 patent”) and 6,920,458 (“the ’458 patent”)) (and WPL’s related declaratory judgment counterclaims), and WPL’s Thirteenth, Fourteenth, Fifteenth, Sixteenth, and Seventeenth counterclaims for damages under Sherman Act §§ 1-2, Lanham Act § 43, Tortious Interference with Existing or Prospective Contractual Relations, and the North Carolina Deceptive Trade Practices Act (the “Damages Counterclaims”). Dkt. 408.

On August 25, 2020, this case came before the Court at a pre-trial management conference pursuant to the Court’s Seventh Amended Docket Control Order, Local Rule CV-16 and Rule 16

of the Federal Rules of Civil Procedure. Following the pretrial hearing, the Court conducted a Copyrightability Hearing on October 14, 2020. At the hearing, SAS confirmed that it had agreed to withdraw its remaining patent claims as part of narrowing its case for trial, and that the parties would submit a revised pre-trial order to that effect. Transcript of 10/14/2020 Copyrightability Hearing at 7:3-8:4. Following the Copyrightability Hearing, the Court issued its Memorandum Opinion and Order on October 26, 2020, Dkt. 465, in which it dismissed with prejudice SAS's copyright claims. *Id.* at 1. As directed by the Court, the parties then met and conferred to discuss "their views on the current status of the case in light of the Court's ruling" and to "identify[] any remaining claims for the currently-set January 4, 2021 trial." Dkt. 465 at 15-16.

On November 10, 2020, the parties submitted a Joint Status Report in which they apprised the Court that they had reached an agreement with respect to WPL's Damages Counterclaims in order to have those claims dismissed without prejudice, subject to the terms of an agreement set forth in the Joint Status Report, and that no remaining claims were ripe for the currently-set January 4, 2021 trial. Dkt. 469.

### **REQUEST TO MODIFY THE FINAL PRE-TRIAL ORDER**

The parties respectfully submit there is good cause to amend the Final Pretrial Order to reflect the withdrawal of SAS's remaining patent claims, as well as the parties' stipulation to dismissal without prejudice of WPL's Damages Counterclaims. With respect to SAS's patent claims, SAS agreed to withdraw its remaining patent claims as part of narrowing the case for trial prior to the Copyrightability Hearing, and SAS agreed in the Joint Status Report that its patent claims should be dismissed with prejudice. Dkt. 469 at 3. The parties further agreed in the Joint Status Report that WPL's counterclaims seeking declaratory judgment as to the Patents-in-Suit are

moot, and that no patent issues remain to be tried in this case. *Id.* Accordingly, there is good cause to remove the remaining patent claims from the Final Pretrial Order.

With respect to WPL's remaining Damages Counterclaims, SAS had previously moved to dismiss, and then moved for summary judgment against WPL's counterclaims under Rule 56. *See* Dkt. 162, 263. The Court denied as moot SAS's motion to dismiss and motion for summary judgment without prejudice to refile. *See* Dkt. 436. Following the Court's October 26, 2020 ruling on SAS's copyright claims, the parties met and conferred regarding whether WPL's remaining Damages Counterclaims would proceed to a ruling on summary judgment and, if necessary, trial. In order to obviate the need for trial at this time and to proceed to WPL's request for costs and attorney's fees, as well as to secure a final judgment that SAS intends to appeal, the parties have stipulated to a dismissal without prejudice of WPL's Damages Counterclaims pursuant to the terms of an agreement between the parties set forth in the Joint Status Report. Dkt. 469 at 3-4. Accordingly, there is good cause to remove the Damages Counterclaims from the Final Pretrial Order.

Because all claims of copyright infringement by SAS against WPL were dismissed with prejudice pursuant to the Court's October 26, 2020 Order, the parties have agreed that WPL's counterclaims of copyright non-infringement and non-copyrightability are moot. Dkt. 469 at 3.

Accordingly, as reflected in the amended Final Pretrial Order, attached as Exhibit A, there are no contested issues of fact or law to be resolved at trial, there are no remaining pending motions, and no witness, exhibits, or deposition designations to be presented at trial. A redline comparison between the proposed Final Pretrial Order filed on June 29, 2020 at Dkt. 408 and the proposed amended Final Pretrial Order is attached as Exhibit B.

## CONCLUSION

For these reasons, SAS and WPL jointly request an order amending the Final Pretrial Order and replacing it with the amended Final Pretrial Order attached as Exhibit A to this Motion.

Dated: November 13, 2020

Respectfully submitted,

*Attorneys for Plaintiff:*

/s/ Pressly M. Millen

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served on counsel for Defendant via the Court's CM/ECF system on November 13, 2020.

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